

AMENDED IN ASSEMBLY SEPTEMBER 10, 1999

AMENDED IN SENATE APRIL 5, 1999

SENATE BILL

No. 1239

Introduced by Senator Burton

February 26, 1999

An act to amend *Section 15700 of, and to add Sections 15606.7 and 15705 to, the Government Code, and to amend Section 23040.1 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1239, as amended, Burton. Corporations: partnership investment income.

The Bank and Corporation Tax Law provides that income from sources in this state is generally taxable. The law exempts from taxation the distributive share of interest, dividends, and gains from the sale or exchange of qualifying investment securities derived by a corporation that is a partner in a partnership that qualifies as an investment partnership, if the income from the partnership is the only income of the corporation derived from sources in this state. This exemption does not apply if the corporation participates in the management of investment activities or is engaged in a unitary business with another corporation that meets specified qualifications.

This bill would provide that the exemption shall also apply to income, gain, or loss from stocks or securities received by an alien corporation whose sole activities in this state involve

trading in those stocks or securities for the corporation's own account, with specified exceptions, ~~as provided.~~

~~This bill would take effect immediately as a tax levy.~~

Existing law provides that the Franchise Tax Board consists of the State Controller, the Director of Finance, and the Chairman of the State Board of Equalization, and specifies the regulatory authority of the State Board of Equalization and the Franchise Tax Board.

This bill would add the Treasurer and a public member to the Franchise Tax Board. The bill would provide for the Chair of the Franchise Tax Board to be selected on a rotating basis. This bill would also revise the regulatory authority of the State Board of Equalization and Franchise Tax Board.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 15606.7 is added to the
2 Government Code, to read:

3 15606.7. In addition to any other procedural
4 requirement related to the adoption of regulations, the
5 State Board of Equalization may not adopt a regulation
6 sooner than 30 days after notification in writing of the
7 necessity therefor, including the specific statutory
8 authority for its adoption, to the chairperson of the
9 committee in each house of the Legislature that considers
10 revenue and taxation, the chairpersons in each house that
11 consider appropriations, the chairpersons of the
12 committees, and the appropriate subcommittees, in each
13 house that consider the State Budget, and the
14 Chairperson of the Joint Legislative Budget Committee.

15 With regard to the proposed regulation, the
16 notification shall include an estimate prepared by the
17 Director of Finance of the net effect on state revenues of
18 the proposed regulation. The Director of Finance shall
19 indicate in that notification whether the net effect on
20 state revenues was identified or contemplated by the
21 Department of Finance at the time the Legislature
22 passed the bill that added or last amended the specific

1 statute authorizing the regulation. If the Director of
2 Finance estimates that the net increase or decrease in
3 state revenues resulting from the proposed regulation,
4 that had not been so identified or contemplated as
5 described in the previous sentence, will exceed one
6 million dollars (\$1,000,000) in the current or any of the
7 three subsequent fiscal years, it shall be deemed that the
8 proposed regulation goes substantially beyond necessary
9 statutory interpretation and that regulation may not be
10 adopted by the board.

11 SEC. 2. Section 15700 of the Government Code is
12 amended to read:

13 15700. There is in the state government, in the
14 Agriculture and Services Agency, a Franchise Tax Board
15 consisting of the State Controller, the Director of Finance
16 and, the Chairman of the State Board of Equalization, the
17 Treasurer, and one public member appointed by the
18 Governor and confirmed by the Senate. The public
19 member shall receive a per diem of one hundred dollars
20 (\$100) for each day actually spent in the discharge of
21 official duties and shall be reimbursed for traveling and
22 other expenses necessarily incurred in the performance
23 of official duties. Commencing with the 2000 calendar
24 year, the Chair of the Franchise Tax Board shall be
25 rotated on an annual basis in a manner that ensures that
26 no chair shall serve as the chair for more than one
27 consecutive calendar year at a time. The Franchise Tax
28 Board is the successor to, and is vested with, all of the
29 duties, powers, purposes, responsibilities, and jurisdiction
30 of the Franchise Tax Commissioner, but the statutes and
31 laws under which that office existed and all laws
32 prescribing the duties, powers, purposes, responsibilities
33 and jurisdiction of that office, together with all lawful
34 rules and regulations established thereunder, are
35 expressly continued in force. “Franchise Tax
36 Commissioner” when used in any statute, law, rule or
37 regulation now in force, or that may hereafter be enacted
38 or adopted, means the Franchise Tax Board. No action to
39 which the Franchise Tax Commissioner is a party shall
40 abate by reason hereof but shall continue in the name of

1 the Franchise Tax Board, and the Franchise Tax Board
2 shall be substituted for the Franchise Tax Commissioner
3 by the court wherein the action is pending. The
4 substitution shall not in any way affect the rights of the
5 parties to the action.

6 Notwithstanding any other provision of the law to the
7 contrary, any directive or regulation adopted by the
8 Franchise Tax Board shall take precedence over any
9 directive or regulation adopted by its executive officer.

10 *SEC. 3. Section 15705 is added to the Government*
11 *Code, to read:*

12 *15705. In addition to any other procedural*
13 *requirement related to the adoption of regulations, the*
14 *Franchise Tax Board may not adopt a regulation sooner*
15 *than 30 days after notification in writing of the necessity*
16 *therefor, including the specific statutory authority for its*
17 *adoption, to the chairperson of the committee in each*
18 *house of the Legislature that considers revenue and*
19 *taxation, the chairpersons in each house that consider*
20 *appropriations, the chairpersons of the committees, and*
21 *the appropriate subcommittees, in each house of the*
22 *Legislature that consider the State Budget, and the*
23 *Chairperson of the Joint Legislative Budget Committee.*

24 *With regard to the proposed regulation, the*
25 *notification shall include an estimate prepared by the*
26 *Director of Finance of the net effect on state revenues of*
27 *the proposed regulation. The Director of Finance shall*
28 *indicate in that notification whether the net effect on*
29 *state revenues was identified or contemplated by the*
30 *Department of Finance at the time the Legislature*
31 *passed the bill that added or last amended the specific*
32 *statute authorizing the regulation. If the Director of*
33 *Finance estimates that the net increase or decrease in*
34 *state revenues resulting from the proposed regulation,*
35 *that had not been so identified or contemplated as*
36 *described in the previous sentence, will exceed one*
37 *million dollars (\$1,000,000) in the current or any of the*
38 *three subsequent fiscal years, it shall be deemed that the*
39 *proposed regulation goes substantially beyond necessary*

1 *statutory interpretation and that regulation may not be*
2 *adopted by the board.*

3 SEC. 4. Section 23040.1 of the Revenue and Taxation
4 Code is amended to read:

5 23040.1. (a) Notwithstanding Sections 23040 and
6 25101, income derived from or attributable to sources
7 within this state shall not include:

8 (1) The distributive share of interest, dividends, and
9 gains from the sale or exchange of qualifying investment
10 securities derived by a corporation that is a partner in a
11 partnership that qualifies as an investment partnership
12 under Section 17955, whether or not the partnership has
13 a usual place of business in this state, if the income from
14 the partnership is the corporation's only income derived
15 from or attributable to sources within this state.

16 (2) Income, gain, or loss from stocks or securities
17 received by an alien corporation whose sole activities in
18 this state involve trading in those stocks or securities for
19 the corporation's own account within the meaning of
20 Section 864(b)(2)(A)(ii) of the Internal Revenue Code,
21 whether the trading is done by the corporation or its
22 employees or through a resident broker, commission
23 agent, custodian, or other agent, and whether or not any
24 such employee or agent has discretionary authority to
25 make decisions in effecting the transactions. This
26 paragraph ~~shall not apply in the case of~~ *does not apply to*
27 a dealer in stocks or securities.

28 (b) (1) Paragraph (1) of subdivision (a) shall not
29 apply to a corporation that participates in the
30 management of the investment activities of the
31 investment partnership or that is engaged in a unitary
32 business with another corporation or partnership that
33 participates in the management of the investment
34 activities of the partnership or has income derived from
35 or attributable to sources within this state other than
36 income described in paragraph (1) of subdivision (a).

37 (2) Paragraph (2) of subdivision (a) ~~shall~~ *does not*
38 apply to an alien corporation that itself has, or that is
39 engaged in a unitary business with another corporation
40 that has, income derived from or attributable to sources

1 within this state other than income described in
2 paragraph (2) of subdivision (a).

3 (c) An alien corporation (other than a dealer in stocks
4 or securities) trading in stocks or securities for ~~it's~~ *its* own
5 account, as described in paragraph (2) of subdivision (a),
6 is not doing business in this state for purposes of Chapter
7 2 of this part.

8 (d) For purposes of this section:

9 (1) "Alien corporation" means a corporation
10 organized under the laws of a country, or any political
11 subdivision thereof, other than the United States.

12 (2) "Dealer in stocks or securities" means a dealer in
13 stocks or securities for purposes of Section
14 864(b)(2)(A)(ii) of the Internal Revenue Code.

15 (3) "Investment partnership" means a partnership
16 that meets both of the following requirements:

17 (A) No less than 90 percent of the partnership's cost of
18 its total assets consist of qualifying investment securities,
19 deposits at banks or other financial institutions, and office
20 space and equipment reasonably necessary to carry on its
21 activities as an investment partnership.

22 (B) No less than 90 percent of its gross income consists
23 of interest, dividends, and gains from the sale or exchange
24 of qualifying investment securities.

25 (4) (A) "Qualifying investment securities" include all
26 of the following:

27 (i) Common stock, including preferred or debt
28 securities convertible into common stock, and preferred
29 stock.

30 (ii) Bonds, debentures, and other debt securities.

31 (iii) Foreign and domestic currency deposits or
32 equivalents and securities convertible into foreign
33 securities.

34 (iv) Mortgage- or asset-backed securities secured by
35 federal, state, or local governmental agencies.

36 (v) Repurchase agreements and loan participations.

37 (vi) Foreign currency exchange contracts and
38 forward and futures contracts on foreign currencies.

(vii) Stock and bond index securities and futures contracts, and other similar financial securities and futures contracts on those securities.

(viii) Options for the purchase or sale of any of the securities, currencies, contracts, or financial instruments described in clauses (i) to (vii), inclusive.

(ix) Regulated futures contracts.

(B) “Qualifying investment securities” does not include an interest in a partnership unless that partnership is itself an investment partnership.

(5) “Stocks or securities” has the same meaning as applies to that phrase as used in Section 864(b)(2)(A)(ii) of the Internal Revenue Code.

(e) The amendments made to this section by the act adding this subdivision shall apply to income years beginning on or after January 1, 1999.

~~SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.~~

